NARAIN SINGARAY

v.

PUBLIC PROSECUTOR

HIGH COURT MALAYA, KUALA LUMPUR
ZAKARIA YATIM J
[FT CRIMINAL REVISION NO. 4 OF 1987]
26 MARCH 1987

CRIMINAL LAW AND PROCEDURE: *Charge - Offence of rape under s. 376 Penal Code - At close of defence case accused found guilty of having carnal knowledge with complainant under 16 years of age - Section 16L(1) Women and Girls Protection Act 1973 - Whether President right in convicting accused on new offence without framing new charge and without reading and explaining charge - Section 173(i) CPC - Power to alter or add to any charge before judgment - Section 158(i) CPC.*

CRIMINAL LAW AND PROCEDURE: *Bail - Stay of execution pending appeal against conviction - Offence of having carnal knowledge with complainant under 16 years of age - Bail increased from RM5,000 to RM8,000 - Whether manifestly excessive - On appeal bail reduced to RM2,000 in one surety pending new trial in Magistrate's Court.*

This was a revision by the High Court Kuala Lumpur under s. 323 of the Criminal Procedure Code ("the CPC") in respect of the order of the President Sessions Court, Kuala Lumpur who without framing the new charge under s. 16L(1) of the Women and Girls Protection Act 1973 from that of the original charge of rape under s. 376 of the Penal Code and without reading and explaining the charge to the Accused found him guilty of the offence under s. 16L(1) of the said Act.

Held:

[1] The President was wrong in convicting the accused under s. 16L(1) of the Women and Girls Protection Act 1973 without framing a charge under that section and without reading and explaining the charge to the accused. The President ought to have framed the new charge under s. 16L(1) of the Women and Girls Protection Act against the accused and have the charge read and explained to the accused.

[2] Although under s. 158(i) of the CPC, the President is entitled to alter or add to any charge at any time before judgment is pronounced, s. 173(i) of the CPC clearly states that the amended charge shall be read to the accused and he shall again be asked whether he is guilty or whether he has any defence to make.

[3] The High Court ordered the case to be re-registered in the Magistrate's Court and to hold a new trial in that Court against the accused under s. 16L(1) of the Women and Girls Protection Act.

[4] The bail was manifestly excessive and accordingly it was reduced to RM2,000 in one surety pending the new trial in the Magistrate's Court.

[Ordered new trial under s. 16L(1) of Women and Girls Protection Act. Bail reduced to RM2,000.]

Legislation referred to:
Criminal Procedure Code, ss. 158(i), 159, 173(i), 323
Penal Code, s. 376
Women and Girls Protection Act 1973, s. 16L(1)

For the appellant - Americk Sidhu; M/s. Americk Sidhu & Co.
For the public prosecutor - Azlan bin Abdul Halim, DPP

JUDGMENT

Zakaria Yatim J:

At the request of Mr. A. Sidhu, counsel for the accused, I called this case for revision under s. 323 of the Criminal Procedure Code.

The accused was tried in the Sessions Court, Kuala Lumpur on three charges of rape punishable under s. 376 of the Penal Code. At the close of the case for the prosecution, the President found that there was a *prima facie* case against the accused on the three charges and called upon the accused to make his defence. After the defence had closed its case, the President found the accused guilty of an offence under s. 16L(1) of the Women and Girls Protection Act 1973 for having carnal knowledge with the complainant, who was under 16 years of age. She then sentenced the accused to one year's imprisonment. Mr. Sidhu applied for stay of execution pending appeal as well as for the bail to be extended. The President granted stay of execution but increased the bail from RM5,000 to RM8,000.

In my judgment the President was wrong in convicting the accused under s. 16L(1) of the Women and Girls Protection Act 1973 without framing a charge under that Section and without reading and explaining the charge to the accused. What the President should have done was to frame a charge under that section against the accused and to have the charge read and explained to the accused. Under s. 158(i) of the Criminal Procedure Code, the President is entitled to alter or add to any charge at any time before judgment is pronounced. Section 173(i) clearly states that the amended charge shall be read to the accused and he shall again be asked whether he is guilty or whether he has any defence to make. After the amended charge has been read and explained, the accused should be called upon to make his plea. See s. 159 of the Criminal Procedure Code. If he pleads guilty, then the President should proceed with the conviction and sentence. On the other hand, if the accused claims trial to the new charge then the President should hear his defence to the new charge and make her finding accordingly.

For the reasons stated above, I order this case be re-registered in the Magistrate's Court and a new trial be held in that Court against the accused under s. 16L(1) of the Women and Girls Protection Act 1973.

With regard to bail, I agree with Mr. Sidhu that a bail of RM8,000 is manifestly excessive. I accordingly reduce the bail to RM2,000 and one surety pending the new trial in the Magistrate's Court.

Also found at [1990] 1 CLJ 179